

The Effects of Opening Statements on Mock Jurors' Verdicts in a Simulated Criminal Trial¹

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Twenty-nine male and 37 female adults served as mock jurors in a simulated criminal trial in which the amount of preview offered in both the prosecution's and defense's opening statements was factorially varied. It was found that the effects upon verdicts of guilt of the amount of preview in either side's opening statement depended on that in the other side's opening statement. Extensive prosecution opening statements led to more guilty verdicts only when the defense's opening statement was also extensive; when the defense's opening statement was brief, participants tended to find the defendant guilty regardless of the amount of preview in the prosecution's opening statement. Extensive opening statements from the defense led to more not-guilty verdicts only when the prosecution's opening statement was brief. Results from a series of mid-trial measures indicated that opening statements predisposed jurors to favor one side or the other very early in the trial, and that jurors tended to maintain this predisposition throughout the course of the trial. It was suggested that opening statements serve to create thematic frameworks which the jurors use to assist them in their processing of trial information. Implications for legal practice were also discussed.

The opening statement is the part of the trial in which the attorneys introduce themselves and their clients and provide the jury with a broad overview of their cases. Opening statements are not evidence, and jurors are specifically instructed not to consider them as such. They are, rather, a preview of what the attorneys believe the evidence will be.

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Many attorneys and legal scholars believe the opening statements to be an extremely important component of the overall trial package, serving both informational and persuasive functions. In a discussion of strategies to be used in the opening remarks, Cohen (1970) asserts: "*This is a crucial stage of the trial and cannot be overlooked or designated as insignificant*" (p. 503, emphasis in the original). Nizer (1961) has written: "By a skillful presentation of what he intends to prove . . . (the attorney) can convert a mere informative exercise into a persuasive plea . . . the opportunity to condition the jury favorably is as limitless as the attorney's art" (p. 42). Marshall (1973) counsels attorneys that a well-prepared opening statement will "greatly enhance your position in the trial" (p. 32).

Clearly, many attorneys recognize the potential of the opening statement to persuade the jury of the merits of one's case from early on in the trial. Yet there are those who would disagree with this viewpoint and downplay the importance of the opening statement. Crittenden (1961), for example, has argued that although the opening statement may be of some use to the prosecution, it is of little value to the defense. Since it is the prosecution which must prove guilt beyond a reasonable doubt, and the defense which must attempt to poke holes in the prosecution's case, Crittenden feels a preview from the prosecution may be advantageous. Defense attorneys, however, are advised by Crittenden to withhold opening statements and maintain the element of surprise which may be used to destroy the credibility of the prosecution's testimony. In fact, Crittenden flatly advises defense attorneys not to make an opening statement.

If opening statements do have an effect on jurors' verdicts, as some attorneys believe, how might they operate? From a psychological perspective, opening statements may serve to create "thematic frameworks" or "schemata" that guide jurors in their processing and interpretation of the actual testimony and evidence that are presented later in the trial. Lingle and Ostrom (1981) define a thematic framework as: "any subset of existing knowledge, based on prior experience and relevant to a limited domain, which people use as a framework to guide their observation, organization, and retrieval from memory of perceived events" (p. 401). Such frameworks could assist the juror in his or her attempt to make sense of the rather disjointed array of information that is presented in the typical trial and may color the way in which this information is interpreted.

Studies of the effect of themes or labels attached to informational arrays provide strong evidence for the operation of thematic frameworks in memory. Bransford and Johnson (1972) and Dooling and Mullet (1973) found recall for sentences and prose to be improved when preceded by a thematic title. Similarly, Hamilton and Katz (Note 2) found that, after exposure to a list of 15 common, everyday behaviors, participants who were asked to form an

impression of a hypothetical target person who enacted the behaviors recalled more of the behaviors than did participants who were instructed to memorize the list. Likewise, Zadny and Gerard (1974) found that providing observers with information regarding actors' intentions resulted in a bias to recall more intention-relevant than intention-irrelevant information.

Studies of the effect of early information on later impressions have also provided consistent support for the operation of thematic frameworks. In a classic study, Kelley (1950) presented a guest lecturer to several of his classes who had previously been described as being either a warm or cold person. Students' subsequent impressions of the lecturer were strongly influenced by the initial description. In a more recent study, Langer and Abelson (1974) had subjects listen to a tape of two men interacting, having previously told half of the subjects that the tape was a job interview and the other half that it was a psychiatric intake interview. Subjects who believed the tape to be an intake interview reported more pathology in the interviewee's behavior and distorted background data in a manner consistent with their impressions. It appears, then, that thematic frameworks affect not only the encoding and retrieval of information from memory, but also the interpretation that is placed on that information.

Thematic frameworks lend structure to experience. Within the context of a jury trial, the testimony of a witness concerning the presence of the defendant at a given place and time may be perceived to be of little significance unless the juror knows that the crime in question took place at that particular location shortly after the defendant was observed. Opening statements may operate as thematic frameworks and provide the structure necessary to interpret such evidence. The frameworks created during opening statements may affect the manner in which later trial information is encoded, organized, and recalled. Thus, depending on the framework that is built up during opening statements, actual evidence may be interpreted in a variety of ways.

Rather surprisingly, only one empirical study dealing with the effects of opening statements on jurors' judgments is available. In this early study, Weld and Danzig (1940) exposed jurors to a live presentation of a civil trial in a moot courtroom and asked them to make judgments of the defendant's liability at 18 points during the course of the trial presentation. Although only descriptive statistics were reported, Weld and Danzig relied on the observed consistency in verdicts from initial to final judgments in order to conclude that opening statements were quite influential in the determination of jurors' liability judgments. Weld and Danzig also concluded that some jurors formed strong opinions early in the trial and interpreted all subsequent evidence in the light of these initial impressions.

The above conclusions, however, are subject to criticism on methodological grounds. Opening statements are, by legal definition, a preview of what the

attorneys believe the evidence will show. It may have been the case that the opening statements utilized in the Weld and Danzig study were, in fact, *good* previews (i.e., accurate and representative) of what was to come. If so, responses to opening statements would be expected to be good predictors of responses to the trial as a whole. The lack of an experimental manipulation of opening statements in the Weld and Danzig study makes an assessment of their true effectiveness impossible.

The present study investigated the effect of the amount of preview offered in opening statements on mock jurors' verdicts in a simulated criminal trial. The amount of preview offered in both sides' opening statement was varied. In the extensive preview conditions, a full summary was provided of what the attorneys expected the evidence to be. In the brief preview conditions, only a very brief introduction of the parties involved and a promise that the evidence would be convincing were provided. In order to determine at what point in the trial the opening statements have their effects, jurors' tentative verdicts were assessed at 13 separate points during the course of the trial. It was hypothesized that if opening statements serve to create thematic frameworks for the trial, both final verdicts and responses to individual bits of testimony will be affected by the amount of preview offered in opening statements.

Method

Subjects

A total of 29 male and 37 female members of local community organizations participated in the study in return for \$5.00 donations to their club. Data from three male and four female participants were eliminated from the analyses due to their failure to fill in their responses at three or more of the decision points. An additional 10 participants failed to make responses at one or two of the decision points. In these instances, participants' responses at that decision point immediately prior to the missing data were used. The study was conducted in groups, ranging in size from 4 to 12 members. Participants were *individually* randomly assigned to conditions in a 2 (amount of preview in prosecution's opening statement) \times 2 (amount of preview in defense's opening statement) factorial design. Thus all conditions were represented in each experimental session.

Trial Presentation and Dependent Measures

The trial presentation consisted of a transcript of a re-creation of an actual criminal trial in which the defendant was charged with transporting a stolen vehicle across state lines. The transcript was part of a booklet that also contained a general introduction to the study, the opening statement manipulations, and the dependent measures.

In the general introduction, terms used in the transcript were defined, and a brief overview of the order of events in the trial was presented. The opening statements followed the general introduction. In the extensive preview conditions, the attorneys gave a full summary of what they expected the evidence to be and how they believed this evidence should be interpreted. In the brief preview conditions, rather than going through the evidence and offering interpretations, the attorneys merely introduced themselves and their clients and promised that their evidence would be convincing. The extensive and brief preview opening statements lasted approximately two pages and one page, respectively. Although this manipulation confounded amount of preview and length, these two variables are likely to covary in actual courtroom settings. It was decided to allow this confound rather than insert potentially distracting or boring filler into the brief preview opening statements.

Following the opening statements were the direct- and cross-examination of witnesses, the judge's instructions, and the closing arguments. These were, of course, constant regardless of condition. At various points in the transcript, a questionnaire was inserted that asked the following: (1) If you were asked to reach a verdict right now, would you find the defendant, Ronald Oliver, guilty or not guilty?, and (2) How certain are you of this judgment? Participants responded to the latter item on a 9-point scale, labelled not at all certain and extremely certain at the endpoints and somewhat certain at the midpoint. At the end of the transcript, a final questionnaire was inserted that asked participants the above two questions and also measured their perceptions with respect to the probability that the defendant actually committed the crime, how interesting and confusing the trial was, and how informative and persuasive the opening statements were.

Procedure

Upon arriving for the experiment, participants were seated and asked to sign an informed consent statement. Participants were told that they were to take part in a study of the ways in which juries reach their verdicts. The booklets, containing the trial presentation, manipulations, and dependent measures, were then handed out and participants were instructed to work through them one page at a time and not look ahead or back once a page was completed. When all participants in the group had finished, the booklets were collected and the group was debriefed.

Results

In order to obtain a more sensitive scalar measure of participants' verdict preferences, dichotomous guilty/not guilty responses were combined with

TABLE 1

MEAN COMPOSITE FINAL VERDICTS

Defense's opening statement	Prosecution's opening statement	
	Extensive	Brief
Extensive	13.13 (16)	7.07 (14)
Brief	12.73 (15)	11.50 (14)

Note: Cell frequencies are indicated in parentheses. Higher values indicate guilty verdicts.

certainty ratings to produce a composite index. The use of this continuous index allowed the application of the analysis of variance to judgments at the decision points. Specifically, if a participant voted not guilty, his/her composite verdict was 10 minus his/her certainty rating. If a participant voted guilty, his/her composite verdict was his/her certainty rating plus 9. Thus a continuous index was formed, with values ranging from 1 (not guilty with high certainty) to 18 (guilty with high certainty). Certainty ratings themselves were not affected by the opening statement manipulations.

Final Verdicts

In order to determine whether the amount of preview offered in opening statements affected final verdicts, a 2×2 analysis of variance was performed on participants' composite final verdicts. Mean composite final verdicts may be found in Table 1. A main effect for the prosecution's opening statement was found, $F(1,55) = 6.52, p < .02$. A trend toward a prosecution's opening statement \times defense's opening statement interaction was also found, $F(1,55) = 2.86, p < .10$.

Tests for simple main effects revealed that the prosecution's opening statement affected verdicts only when the defense's opening statement was extensive and the defense's opening statement affected verdicts only when the prosecution's opening statement was brief, $F(1,55) = 9.01, p < .01$; $F(1,55) = 4.82, p < .05$. When the defense's opening statement was brief, participants tended to find the defendant guilty, regardless of the extensiveness of the prosecution's opening statement. When the defense's opening statement was extensive, however, participants tended to find the defendant guilty only after hearing an extensive opening statement from the prosecution. A brief opening statement by

TABLE 2

PROPORTIONS OF GUILTY FINAL VERDICTS

Defense's opening statement	Prosecution opening statement	
	Extensive	Brief
Extensive	.75 (16)	.21 (14)
Brief	.67 (15)	.57 (14)

Note: The number of observations upon which the proportions are based is indicated in parentheses.

the prosecution coupled with an extensive opening statement from the defense led to a tendency towards a not guilty verdict.

Log-linear analyses (logit, Fienberg, 1977, chapter 6) of dichotomous final verdicts point to a similar conclusion. Proportions of guilty verdicts in each cell may be found in Table 2. A main effect for the prosecution's opening statement and a trend towards a prosecution's opening statement \times defense's opening statement were found, $\chi^2(1) = 8.85, p < .01$, $\chi^2(1) = 3.03, p = .082$. Subsequent pairwise χ^2 analyses revealed that the prosecution's opening statement influenced verdicts only when the defense's opening statement was extensive, $\chi^2(1) = 8.57, p < .01$, and the defense's opening statement influenced verdicts only when the prosecution's opening statement was brief, $\chi^2(1) = 3.74, p < .06$. Analyses of variance on proportions transformed by the arc-sine transformation (cf. Langer & Abelson, 1972) yielded identical results.

Decision Point Analyses

In order to determine at what points in the trial the opening statements had their effects, a 2 (prosecution's opening statement) \times 2 (defense's opening statement) \times 13 (decision points) analysis of variance, with decision points treated as a within-subject factor, was performed on participants' final composite verdicts. Mean composite verdicts at each decision point may be found in Figure 1. Significant main effects were found for both the prosecution's and defenses's opening statements and decision points, $F(1,55) = 10.95, p < .002$; $F(1,55) = 4.37, p < .05$; $F(12,660) = 10.26, p < .001$. Additionally, two interactions were found: a prosecution's opening statement \times decision point interaction and a prosecution's opening statement \times defense's opening

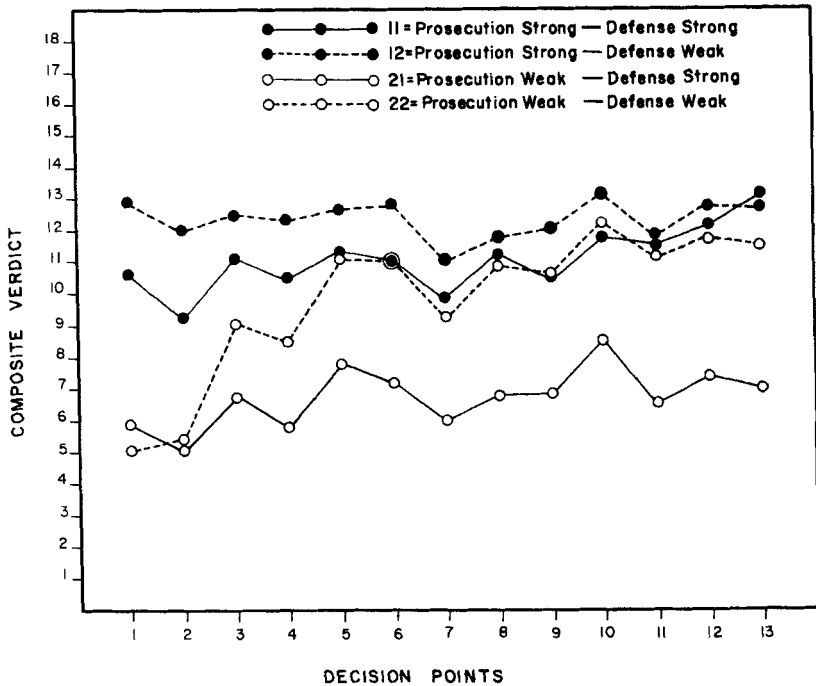


FIG. 1. Mean composite verdicts by decision points for all groups.

statement \times decision point interaction, $F(12,660) = 3.77, p < .0001$; $F(12,660) = 3.33, p < .0001$. Inspection of Figure 1 reveals that regardless of the amount of preview offered in defense's opening statement, participants exposed to an extensive opening statement from the prosecution gave relatively strong guilty verdicts early in the trial and maintained these verdicts throughout the trial. Participants who heard brief opening statements from both sides made judgments tending towards not guilty after opening statements (decision points one and two), but very quickly increased their guilty votes once the testimony began, becoming indistinguishable from the extensive prosecution participants by decision point five (which was after direct examination of the prosecution's second witness). Participants in the brief prosecution-extensive defense opening statement group maintained their tendency towards a not guilty verdict throughout the course of the trial. It appears, then, that the amount of preview offered in the defense's opening

statement affected brief prosecution opening statement jurors' responses to the evidence offered between decision points two and five. When the defense's opening statement was extensive, jurors were relatively unaffected by the testimony of the prosecution's first witness. When the defense's opening statement was brief, however, jurors were greatly influenced by this testimony, and moved over to the guilty end of the continuum.

Trial Perceptions

Two (prosecution's opening statement) \times 2 (defense's opening statement) analyses of variance were performed on the various trial perception items. The only significant finding was a main effect for the defense's opening statement on the item tapping the extent to which participants found the defense's opening statement to be informative, $F(1,54) = 4.76, p < .05$. Thus participants in the extensive defense opening statement groups ($\bar{X} = 5.74$) found the defense's opening statement to be more informative than participants in the brief defense opening statement groups ($\bar{X} = 4.70$).

Discussion

The present study found that the effect of the amount of preview offered in either side's opening statement depended on the amount of preview offered in the other side's opening statement. The defense's opening statement affected verdicts only when the prosecution's opening statement was brief; the prosecution's opening statement affected verdicts only when the defense's opening statement was extensive. It appears that jurors were heavily influenced by the first strong presentation they read. When the prosecution's opening statement was extensive, the first strong persuasive communication the jurors received was from the prosecution, and the jurors tended to find the defendant guilty regardless of the extensiveness of the defense's opening statement. When the prosecution's opening statement was brief and the defense's opening statement was extensive, the first strong persuasive communication the jurors received was from the defense, and jurors tended to find the defendant not guilty. When both sides's opening statements were brief, the first strong persuasive communication the jurors received was the testimony of the prosecution's first witness, and jurors tended to find the defendant guilty. Thus it appears that the first strong persuasive communication jurors received served to create thematic frameworks that were important determinants of their final verdicts.

The pattern of verdict preferences for the various groups across the 13 decision points was consistent with this interpretation. Opening statements appeared to have their effects very early in the trial, predisposing jurors to favor one side or the other throughout the case. Thus after hearing an extensive opening statement from the prosecution, jurors tended to favor a guilty verdict

from early on in the trial and maintain this preference until the trial's conclusion. When exposed to an extensive opening statement from the defense and a brief opening statement from the prosecution, jurors tended to lean towards a not guilty verdict throughout the course of the trial, and be relatively uninfluenced by prosecution witnesses. Only when both sides' opening statements were brief was there any substantial shift in verdict preference. In this instance, jurors seemed to give the defendant the benefit of the doubt after hearing the brief opening statements and lean towards a not guilty verdict. After hearing the prosecution's first witness testify, however, they began to shift towards the guilty end of the continuum, and stayed there until the trial's conclusion. It appears, then, that the first strong persuasive communication jurors received colored their judgments from the onset of the trial and subsequent exposure to evidence was unable to counter this predisposition.

One explanation for the obtained predisposing effects of opening statements is that the opening statements served to create thematic frameworks (Lingle & Ostrom, 1981) which jurors used in interpreting the evidence in the trial. Jurors may have used the theories developed by the attorneys in the extensive opening statement conditions as a general framework or scenario of what took place on the days on which the crime was perpetrated. As may be seen in Figure 1, jurors' responses to individual bits of testimony were affected by the amount of preview offered in opening statements. In the brief prosecution opening statement conditions, the testimony of the prosecution's first witness (between decision points two and five) was highly influential for brief defense opening statement participants, but had little effect on extensive defense opening statement participants. Presumably, participants who were exposed to the extensive defense opening statements had richer and more elaborate frameworks that consisted primarily of the defense's version of the testimony and were thus relatively unaffected by the prosecution's first witness. Participants in the brief defense opening statement condition had less elaborate frameworks that consisted of only the names of the parties in the case and crime with which the defendant was charged. Having only a vague idea of what the other issues in the case were, these participants were heavily influenced by the prosecution's first witness. The actual evidence in the case was apparently interpreted in light of the general framework created by the opening statements.

The finding that jurors were strongly influenced by the first strong persuasive communication may be interpreted as indicating that a primacy effect was operating in the present study. In contrast to these findings, Walker, Thibaut, and Andreoli (1972) reported a recency effect in a study that varied the order of presentation of evidence. Whereas Walker et al. varied the order of presentation of 50 factual statements of evidence that were read to jurors by law students, the present study held order constant, employed a complete written transcript, and varied the amount of preview offered in opening statements.

Given the strong dependence of order effects on procedural factors (cf., Miller & Campbell, 1959), we can only speculate as to specifically what factors led to this divergence in findings.

According to Lingle and Ostrom (1981), thematic framework affect the encoding, organization, and retrieval from memory of perceived events. Although the present study demonstrated an effect of opening statements on judgments of guilt, it is unclear at what point(s) in the information processing sequence this effect takes place. It may be of theoretical interest for future studies to investigate this question.

The present study indicates that the amount of preview offered in opening statements is an important determinant of jurors' final verdicts and responses to individual pieces of evidence. The amount of preview was, however, unavoidably confounded with the length of the statements. Although the length of the opening statement is part of the "amount of preview" manipulation, it may be of interest for future studies to investigate what effects this variable may have apart from the amount of preview. It may also be useful to investigate the effects of other variations in opening statements, such as style of delivery or the use of emotional vs. rational appeals.

A potential criticism of the present study is that the multiple judgment procedure may have committed jurors to their initial positions, thus resulting in the obtained pattern of data. This seems an unlikely explanation, however, since recent studies that have controlled for this possibility by including groups that made only final judgments have found no evidence of a commitment effect operating in this paradigm (Kassin & Wrightsman, 1979; Pyszcynski, Note 1). Additionally, the multiple judgment procedure employed in the present study involved only a private commitment, which would not be expected to produce such effects (Kiesler, 1971).

Another concern for the present study is the extent to which these findings generalize outside of the laboratory to actual courtroom practice. A written transcript read in the laboratory is quite different from the complexity and richness of the proceedings in an actual courtroom. Despite this limitation, the present study better approximates the courtroom situation than most mock jury studies in several respects. Participants were recruited from the community rather than introductory psychology subject pools. In a recent review, Bray (Note 3) found that, of the 45 studies he surveyed, 71% used college students as mock jurors. The present study also utilized a full transcript, rather than the brief fact summary so common in jury studies. Nonetheless, care should be taken in attempting to generalize these findings beyond the present context. The extent to which these findings generalize to other settings is an important question for future research.

The present findings suggest that it may be advantageous for attorney's to present opening statements that clearly spell out what the evidence will

be and how it should be interpreted. It may be unwise, however, to advocate that the most extensive opening statement possible be made by attorneys in all cases. As Crittenden (1961) has noted, lawyers are oftentimes faced with a situation in which they don't know for sure exactly what the evidence from a particular witness will be. In such instances, it may be dangerous to make too strong an opening statement and run the risk of promising more than one can deliver in evidence. Studies of the effects of claims made during opening statements that are not fulfilled in the testimony of the witnesses are needed. Despite this reservation, the present findings indicate that opening statements have the potential to produce rather dramatic effects on verdicts.

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